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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/688,143	10/16/2000	Douglas A. Newburg	2153-0110P	9994

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EXAMINER
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BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/26/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/688,143

Applicant(s)

NEWBURG, DOUGLAS A

Examiner

William H. Beisner

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 10, 16 and 19-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's comments concerning the restriction requirement and applicant's amendments filed in response to the restriction requirement are found to be persuasive such that the restriction requirement has been withdrawn. Claims 1-27 will be examined on their merits.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3 all recite formulas as part of the claim language and define a specific element dimension using these formulas. However, the claim language has been amended to recite that the desired variable "can be calculated". The previous claim language recited "being determined by". It is not clear in view of the newly recited claim language if the desired variable is limited to the recited formula or merely optional. Clarification is requested. What is the difference between the language "can be calculated" and "is determined by". The claims will be examined as though "can be calculated" is an optional limitation recited in the claim language.

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ranjith (GB 2 220 250).

With respect to claims 1 and 2, the reference of Ranjith discloses a valve (2) for insertion into a ferrule of a conduit (1). The valve includes a sample cavity (6); a sampling orifice (6a); and a drain outlet (7,8). The sample orifice has a diameter, however, the instant claim language does not require that the diameter has to be determined according to the formula listed in the claims (See the discussion of the claim language in the 35 USC 112, second paragraph, rejection set forth above).

With respect to claim 15, the reference of Ranjith discloses a conduit (1) which includes a ferrule (See Figure 1a). The ferrule includes an internal bore with a longitudinal axis which corresponds with shaft (15). The reference also discloses a valve (2) with an internal cavity (6) and an orifice (6a) wherein the longitudinal axis of the orifice and/or cavity is offset relative to the longitudinal axis of the internal bore of the ferrule.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ranjith (GB 2 220 250).

The reference of Ranjith has been discussed above.

While the orifice of the reference of Ranjith is offset relative to the bore of the ferrule of the conduit, the instant claim requires that the orifice is "above" the axis of the bore.

Based merely on the direction of flow of product within the conduit, it would have been obvious to one of ordinary skill in the art to determine the position of the orifice such that it is exposed relative to the flow of fluid in the conduit. That is, looking at figure 1a, if flow is from top to bottom, it would have been obvious to position the orifice at an upper position so as to contact the opening with the flow of fluid.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 3-9 and 11-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4 and 5 of U.S. Patent No. 6,133,022 in view of Meyer (US 4,669,321).

Claims 4 and 5 of U.S. Patent No. 6,133,022 encompass a valve device which includes a valve body having an internal drainage path with an angle of declination in a direction away from the vessel or conduit which it is intended to be used.

While the above claims recite a valve device which is the same as that instantly claimed, claims 3-9 and 11-13 differ by reciting that the valve is employed in combination with a ferrule which includes an inner bore having an angle of inclination.

The reference of Meyer discloses that it is known in the art to provide sampling ferrules in the walls of vessels or conduits which include an internal bore with an angle of inclination (See Figure 1).

In view of this teaching, it would have been obvious to one ordinary skill in the art to employ the valve of the claims of U.S. Patent with the ferrule of the device of the reference of Meyer for the known and expected result of providing the sampling valve of the patent claims in combination with a known fitting or ferrule for sampling liquids from a vessel or conduit. It

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would have been obvious to one of ordinary skill in the art to compensate for the angle of inclination of the ferrule while still maintaining the required declination of the drainage path in the sampling valve of the U.S. Patent claims. Employment of the valve of the patented claim in a ferrule of Meyer as suggested above would inherently result in a drainage path which passes above and beyond a lower rear margin of the ferrule.

***Allowable Subject Matter***

11. Claim 14 is allowed.

12. Claims 10, 16 and 18-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter:

The above claims are allowable over the prior art of record because the prior art of record does not teach or fairly suggest a sampling valve which includes valve body having a longitudinal axis and/or a ferrule having a bore with a longitudinal axis and a sampling orifice having a longitudinal axis wherein the sampling orifice axis is offset relative to the valve body axis and/or ferrule bore axis and wherein the internal cavity or drainage passage within the valve body declines in a direction away from the orifice.

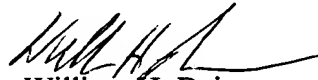
***Conclusion***

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:40am to 4:10pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



William H. Beisner  
Primary Examiner  
Art Unit 1744

WHB  
March 24, 2003